

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 166 (Chair, Health and Government Operations
 Committee)(By Request - Departmental - Health)
 Health and Government Operations

Health Occupations - State Board of Massage Therapy Examiners - Revisions

This departmental bill (1) creates a new “massage therapy establishment” permit from the State Board of Massage Therapy Examiners that is required to establish or operate such an establishment; (2) implements the Federal Bureau of Investigation (FBI) “rap back” service for criminal history record information; and (3) makes technical corrections and provides clarity to educational requirements and the scope of practice for massage therapists.

Fiscal Summary

State Effect: Special fund expenditures increase by \$32,300 in FY 2019 and by \$91,800 in FY 2020 for new staff and outreach. Special fund revenues increase significantly beginning in FY 2020 from permit fees and likely offset expenditures. Potential increase in general fund revenues beginning in FY 2020 due to the board’s penalty authority.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	\$0	-	-	-	-
SF Revenue	\$0	-	-	-	-
SF Expenditure	\$32,300	\$91,800	\$93,000	\$96,400	\$100,000
Net Effect	(\$32,300)	(\$91,800)	(\$93,000)	(\$96,400)	(\$100,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: This bill is not anticipated to have a fiscal or operational impact on local governments.

Small Business Effect: Maryland Department of Health has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law:

Massage Therapy Establishments

Under current law, massage therapy establishments are not defined or regulated nor is there a permit requirement. The bill establishes a new permit application and renewal process; grounds for penalties for violating new provisions related to massage therapy establishments; and new inspection authority for the board.

Definition and Requirements: The bill defines a “massage therapy establishment” as a place of business that offers to provide massage therapy treatment and where massage therapy treatment is provided on the premises of the business. A massage therapy establishment permit is nontransferable and must be conspicuously displayed. Massage therapy establishments are subject to restrictions related to truth in advertising and trade names. The board must develop regulations implementing the bill’s provisions related to massage therapy establishments and, to the extent practicable, mitigate the fiscal impact of the bill’s new requirements on current licensees and individuals seeking to operate multiple massage therapy establishments in the State.

Under the bill, a massage therapy establishment must (1) operate in compliance with all applicable laws and regulations; (2) be located and equipped to operate without endangering public health and safety; (3) ensure that a licensed massage therapist or registered massage practitioner be immediately available on the premise when treatment is being provided; (4) not offer or provide treatment under any term or condition that tends to interfere with or impair the free and complete exercise of professional judgment or skill; (5) not participate in any activity that constitutes grounds for board disciplinary action; (6) maintain specified minimum sanitary standards; (7) maintain accurate and complete client records and dispose of client records in compliance with applicable laws; (8) not allow misrepresentation by unauthorized individuals; and (9) comply with all local laws.

Applications: Permit applicants must submit an application, pay an application fee, pass the board massage therapy establishment jurisprudence exam, and comply with any other regulatory requirements. The board must issue a permit to a qualified applicant. If the board denies a permit application, the board must provide written notice of its decision and the reasons for denial. An applicant is authorized to petition for judicial review as allowed by the Administrative Procedure Act (APA).

Renewal: The bill establishes that a permit is valid for two years and the board must provide specified renewal notice to a permit holder before a permit expires. To renew, a permit holder must meet all requirements, pay a nonrefundable renewal fee, and submit a

renewal application. If a permit holder fails to renew the permit on time, the board may not reinstate the permit until the applicant completes a required form, provides a reason for the applicant's failure to renew on time, and pays a late fee in addition to the renewal fee.

Inspections: Under the bill, the board may perform inspections, including follow-up inspections, of all massage therapy establishments whether permitted or not. Inspections must be performed either (1) in response to a verifiable complaint to the board or (2) on a schedule established in regulations. Failure to cooperate with an inspection may lead to disciplinary action.

Penalties: The bill establishes grounds for suspension or revocation of a massage therapy establishment permit and/or a penalty of up to \$10,000. Before taking any action to suspend or revoke permit, a permit holder must be given an opportunity for a hearing before the board. A permit holder whose license has been suspended or revoked may petition for judicial review as allowed by the APA. Any penalty revenue is remitted to the general fund.

Miscellaneous

The bill changes references to “practice massage therapy” to “*provide* massage therapy *treatment*” throughout the title and makes other clarifying and technical changes. The bill replaces the phrase “massage therapy” with “massage therapy *treatment*,” alters the definition, and clarifies that “massage therapy treatment” does not include the diagnosis of a specific pathology or injury, the spinal manipulation or those acts of physical therapy that are outside the scope of massage therapy treatment, or the prescribing of prescription drugs.

The board must provide ongoing assistance to the Maryland Human Trafficking Task Force (MHTTF), law enforcement, and stakeholders involved in preventing, investigating, or prosecuting human trafficking.

Massage Therapy License and Registration

The bill defines “contact hour” as a period of 50 minutes of actual time a student spends in a lecture, educational course, or a laboratory when an instructor is teaching the student. “Credit hour” is defined as time a student spends in a lecture, an educational course, or a laboratory where 1 semester hour equals a minimum of 15 contact hours per semester.

The bill establishes that an applicant for a license must, among other requirements, satisfactorily complete either 24 credit hours in basic and applied science courses related to health care *or* 360 contact hours of advanced massage therapy continuing education as approved by the board. The bill clarifies that applicants for both a license and a registration must complete 600 *contact* hours of education in and *have graduated from* a

board-approved program for the study of massage therapy that includes specified areas of content. The bill adds pathology to the required areas of content for that both a licensee and registrant must complete as part of the required educational experience. The bill codifies current regulations requiring applicants for a license to have a current CPR certification at the health care provider level. Similarly, the bill codifies current regulations requiring applicants for a registration to have a current CPR certification at the basic level.

The bill reduces the amount of time after which the board is prohibited from reinstating a former licensee or registrant who fails to apply for reinstatement from five to two years.

Criminal History Records Check

The bill reduces from two to one the number of legible sets of fingerprints that must be submitted for a criminal history records check (CHRC). Further, the bill establishes that if additional criminal history record information is reported to the Criminal Justice Information System (CJIS) after the initial CHRC, CJIS must provide a revised printed statement of the individual's criminal history record to the board.

Background: MHTTF is the State's primary organization that works to prevent trafficking, protect victims by providing them with the services they need, prosecute traffickers, and partner with a variety of organizations to eradicate human trafficking from Maryland's communities. A 2015 [report](#) from the Workgroup to Study Safe Harbor Policy for Youth Victims of Human Trafficking explained that "Maryland's position between several East Coast metropolitan areas and the presence of major interstate highways through the State has made Maryland a hot spot as both a pass through and a destination for human traffickers."

A 2012 report issued by the Governor's Office of Crime Control and Prevention and MHTTF quotes a 2012 article in *The Sentinel*, which stated that "[Maryland] Police say in 2011, they began noticing a sharp increase in the number of acupuncture and massage parlor advertisements in the adult section of websites that cater to adult service. Police say they also received a number of complaints from citizens concerning the businesses. According to police, they discovered the illegitimate massage and acupuncture businesses were havens for human trafficking and were also exploiting women for profit."

The board advises that the massage therapy establishment permit and associated inspection authority established under the bill authorize the board to verify that all employees of a massage therapy establishment that are providing massage therapy are current licensees or registrants and are not victims of, or engaging in, human trafficking. The board notes that it has collaborated with law enforcement to investigate these concerns in the past and that the board continues to get complaints related to human trafficking and prostitution, for which massage therapy establishments have traditionally provided a front.

State Revenues: Despite the bill’s October 1, 2018 effective date, the board indicates that permitting will likely not begin until fiscal 2020 at the earliest. Thus, board special fund revenues increase significantly beginning in fiscal 2020, likely by at least \$100,000, from application and exam fees. Once permitting begins, special fund revenues further increase in out-years from biennial permit renewal fees. The actual amount of revenues cannot be reliably estimated at this time and depends on several factors including how many massage therapy establishments exist and are permitted under the bill; at what level the board chooses to set application, exam, and permit fees; and the number of individuals that must take the exam. Most of these factors are to be determined in regulations promulgated by the board. The board has expressed an intention to set permit fees so that revenues offset expenditures.

General fund revenues may also increase beginning in fiscal 2020 from the board’s authority to issue a penalty of up to \$10,000 instead or in addition to suspending or revoking a permit.

State Expenditures: Although the board indicates that permitting will likely not begin until at least fiscal 2020, given the breadth of the regulatory program and the potential for a large number of affected massage therapy establishments, board special fund expenditures begin in fiscal 2019 to prepare for issuance of permits. Accordingly, special fund expenditures increase by \$32,349 in fiscal 2019, which accounts for the bill’s October 1, 2018 effective date. Fiscal 2019 expenditures reflect the cost to hire one part-time (50%) office administrator to assist with the development of regulations, procedures, and a new massage therapy establishment jurisprudence examination, as well as one-time outreach costs to inform massage therapy establishments about the new permit requirements.

Special fund expenditures increase by \$91,788 in fiscal 2020, which reflects the additional cost, once permitting has begun, to hire one health occupations investigator to complete inspections and any necessary investigations. These estimates include salaries, fringe benefits, and ongoing operating expenses.

	<u>FY 2019</u>	<u>FY 2020</u>
Positions	0.5	1
Salaries and Fringe Benefits	\$22,114	\$89,550
One-time Outreach Costs	10,000	0
Other Operating Expenses	<u>235</u>	<u>2,238</u>
Total State Expenditures	\$32,349	\$91,788

Future year expenditures reflect full salaries with annual increases and employee turnover, as well as increases for ongoing operating expenses.

The Office of Administrative Hearings (OAH) advises that the board intends to conduct hearings internally. Thus, there is no fiscal or operational impact on OAH.

The Department of Public Safety and Correctional Services can provide the required “rap back” service with existing budgeted resources and staff.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor’s Office of Crime Control and Prevention; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Maryland Human Trafficking Task Force; Office of Administrative Hearings; Workgroup to Study Safe Harbor Policy for Youth Victims of Human Trafficking; Department of Legislative Services

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mm/jc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES
Department of Health
Session 2018

TITLE: State Board of Massage Therapy Examiners – Revisions

PREPARED BY: Linda Beyer

(Program\Unit): Health Occupations Boards and Commissions

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 X WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

FY19 expenditures would include mass mailing to advertise the new license. The estimated cost for printing and postage is \$10,000.

FY19 expenditures would include one part-time Office Secretary II @ \$13,944 plus fringe @ \$1,301. The Board already has office space and furniture available.

FY20 expenditures would include one full-time Health Occupations Investigator II @ \$36,765 plus fringe @ \$3,430.

Computer and phone cost would be \$1,300.

The Board already has office space and furniture available.